

**FLATHEAD COUNTY PLANNING BOARD  
MINUTES OF THE MEETING  
SEPTEMBER 24, 2008**

**CALL TO ORDER** A meeting of the Flathead County Planning Board was called to order at approximately 6:00 p.m. Board members present were Marie Hickey-AuClaire, Jim Heim, Marc Pitman, Gordon Cross, Gene Dziza, Mike Mower, and Rita Hall. Frank DeKort and Randy Toavs had excused absences. Andrew Hagemeyer and Jeff Harris represented the Flathead County Planning & Zoning Office.

There were approximately 55 people in the audience.

**APPROVAL OF MINUTES** No minutes were approved at this meeting.

**PUBLIC COMMENT**  
*(not related to agenda items)*

None.

**FISH HATCHERY ZONING DISTRICT (FZD-08-01)** A Zoning request to establish the Fish Hatchery Zoning District, by citizens within the proposed boundaries to be zoned. The area is currently unzoned and the proposal would establish R-1 (Suburban Residential) zoning along the Flathead Lake shoreline bordered on the north by Old Highway 93 Zoning District, on the west by U.S. Highway 93 and on the south by Mission View Terrace subdivision.

**STAFF REPORT** Andrew Hagemeyer reviewed Staff Report FZD 08-01 for the Board.

**BOARD QUESTIONS** Dziza asked what the minimum lot width for an R-1 zone would be.

Hagemeyer said minimum lot width in R-1 zoning is 150 feet however the side setbacks become smaller if the lot itself is less than 150 feet. It's base of 150 feet but then it allows some flexibility for side setbacks in case the lot is not 150 feet.

Dziza asked if he knew how many lots were less than 150 feet. It's a lot of lake front property.

Hagemeyer said there are a lot of parcels that have some pretty skinny lake frontage. He felt those lots area already less than an acre anyway. There is some distinct pattern in the lots less than an acre. He pointed those out on the map. Chances are there are some small lots but there are also a lot of bigger lots too that don't have an issue with a 150 foot setback.

Pitman asked what would happen to the lots that are non-conforming use if the owner wants to build a new house. Would there be any restrictions.

Hagemeier said if you have a home already on there it stays non-conforming.

Harris said they can certainly build a new home and vary the footprint. There would still be setback requirements. A lot of these older subdivisions are historic, dating around 1900. Back then no one envisioned the square footage of the homes being built on lake. Those would be prime candidates for a variance request if they came in and just couldn't get the footprint to the home on the lot and maintain the setbacks. Because of those historic lots they would be prime candidates for a hardship case. Obviously, staff would work with any situation that comes up in the future.

Pitman asked if the fish hatchery were within the area, it's not a residential use and it is state owned.

Hagemeier said the fish hatchery is included but state property is not subject to zoning.

Harris said if it sold to a private individual, the zoning would apply. The state would typically honor the zoning. They are a non-conforming use. If it does become privately owned it triggers the zoning.

Pitman asked if covenants from any prior subdivision go away or do they stay in effect.

Hagemeier stated planning and zoning regulations take precedence over covenants. He gave some examples of what might happen is and R-1 zone. The point is, if it's permitted in the zoning but restricted in the covenants, it would still be restricted on the property. If the covenants are more restrictive they would rule. If the county zoning is more restrictive the county would rule.

Hall spoke of the number of lots in the district and reiterated 59% of the lots would be non-complying, less than one acre. It was important to her only 27% of the parcels owned by the signers of the petition are greater than one acre.

Hagemeier said the information she was giving was not in his staff report.

Hall said it was not she had done her own research.

Hagemeier disagreed with her statistics and showed her on the map.

Pitman asked what the zoning to the north was.

Hagemeier said we have two zoning districts. Old Highway 93 Zoning District is R-2 to the north and Spring Creek Zoning District is R-1 to the west. Properties to the south are not zoned but are half acre lots.

Pitman pointed out there is R-1 zoning to the north and half acre lots to the south and they want to put R-2 between essentially R-1 areas.

Harris commented part of the explanation is our current growth policy calls for one unit per acre. Lakeside is currently updating their neighborhood plan and when completed may suggest something different. If that is the case, at that time it would be more than appropriate to look at that. At the present time staff has to fall back to the existing neighborhood plan as well as the growth policy which has detailed this area along the lake. The R-1 zone works and it is not uncommon to see this type of mosaic in zoning.

Pitman said it just seems obvious to him the majority of the lots would fit into an R-2 designation or higher. Lakeside sewer does service the area.

Heim said the sewer line goes through the entire area but there is no Lakeside Water & Sewer District water in the area at all. Sewer is available water is not.

Hagemeier state the reasons why they wanted to zone this area R-1 was their concern about the character of their neighborhood. They have seen some changes going on around there they were not comfortable with. Because it is unzoned they were concerned about condominiums as well as other uses.

Pitman said it seemed contrary to what they were saying, they want to maintain the character but the character is already R-2 zoning.

Hagemeier stated after the Lakeside Community Council meeting he looked into potential build. He looked at each lot and how it could be split. If it was zoned R-1 there is the potential to create 48 new lots in the future. If they were to be zoned R-2 we would be looking at 167 new lots in potential build out. He felt R-2 might not preserve the character.

Pitman asked how much you would need for clustering in an R-2 zone. He thought you would need over two acres so there would not be a whole lot of clustering.

Harris said you need two acres for a Planned Unit Development (PUD). Clustering wouldn't make any sense in this area. You just don't have the land mass. Some of the larger land owners could conceivable come in with a PUD plan or they could aggregate and come in with an even larger PUD plan and that would give them increased density over what Hagemeier was talking about.

Dziza asked where Cherry Hill Condominiums were located.

Hagemeier showed the area on the map, about a half mile away.

## **APPLICANT PRESENTATION**

John Lacey, attorney, represented the applicants. He stated many of the owners in this area are not necessarily full time residents. Those seasonal owners have demonstrated their support and commitment to this project by signing a petition. Most of those have also written letters. Above and beyond that commitment, many of them were there. He pointed out the applicants. The zoning regulations and zoning districts must be created in general accordance with the applicable growth policy. This area was designated R-1 in the growth policy, one unit per acre. There is the distinct possibility going beyond R-1 would vastly change the neighborhood. The plan presented both implements and embodies the spirit and the letter of both the growth policy and the Lakeside neighborhood plan. Additionally, the nature of the neighborhood is well defined. It's generally rural in character and this proposal is an attempt to maintain the character and preserve what is there. Most importantly they want to maintain the quality of life most in the neighborhood have come to expect. This area is not fit, physically or geographically, for larger development that gets beyond a residential single family use. The roads are substandard and not fit from a health and safety standpoint for larger use. That is a critical component of any zoning consideration. As a matter of the use in place needs to be preserved. It's there for very consistent reasons with the zoning being requested. Recently, this area has been the focus of zoning. This area of the lake is changing and folks in the area are responding by seeking to zone their properties. We have the Spring Creek Zoning District and the Old Highway 93 Shoreline Zoning District; this attempt to zone the Fish Hatchery area is a continuation of that sound planning process which makes planning staffs job easier and makes public service deliverance that much easier. It ultimately preserves the quality of life for landowners and neighbors in an area. When we look to the growth policy and recent activity that has gone on there, this is the right way to do this. It's certainly what was contemplated at the time people set out to implement and develop the growth policy. An issue he needed to raise was traffic. He alluded to the roads, just as staff had, as a matter of health and safety inside the district. They need to be maintained. Expanding the possibility of other non-single family residential uses would create more headaches for owners as well as the county. The second traffic consideration is this is right along Highway 93 and every one of us knows the stretch between Lakeside and Somers is hilly and sees an increase in speed outside those neighborhood areas where there are speed reductions. There are lots of fast drivers and traffic at that speed, with an increased use, either entering or exiting the district if it goes beyond single family represents a significant threat to people's health. Traffic and getting onto and off the highway is a major concern for people and their families, it's a safety issue. There is not good ingress and egress out of there currently, and allowing a use inside of the district would pose a real threat. Another issue is the quality of Flathead Lake. We've all heard what a unique and one of a kind asset Flathead Lake is. The water quality issues need to be preserved. This is a more compelling reason why maintaining the character of this rural area as

a single family residential R-1 use is a very compelling element. We have specific comments from a number of agencies supporting this use because of its protection of Flathead Lake. Being designated as the Fish Hatchery Zoning District, the fish hatchery being the northern border of this district, again preserving that highlights how important it is that we do what we can to preserve that asset. This proposal has the support of the vast majority of owners to the extent there are concerns about whether those families and the owners would be able to for example, change their use by trying to update a home. There are lots of ways those interests could be protected within the R-1 proposal being requested. This is an attempt to maintain what exists.

**AGENCY  
COMMENTS**

None.

**PUBLIC  
COMMENTS**

Steve Leicht, 857 S Juniper Bay Road, is one of the co-applicants. As a property owner in the proposed zoning area the time has come to take steps to preserve the well established character of the neighborhood. The area has evolved over many years into a single family residential area. To assure this continues to be the case they petitioned the county to create the Fish Hatchery Zoning District. The planning board was created by the county commissioners to promote orderly development in the county. The citizens of the proposed Fish Hatchery Zoning District are requesting the boards help in creating orderly development by supporting their efforts to zone the area R-1. The growth policy designated the area, now referred to as the Fish Hatchery Zoning District, as one dwelling per acre for future planning and efforts. Our request for R-1 single family residential is the only designation that fits the guidelines adopted by the planning board and the county commissioners. We have had the full support of the planning office and were encouraged to follow the guidelines of the growth policy. We have done that by requesting an R-1 designation. They have circulated a petition amongst the owners in the proposed zoning district and collected signatures of a clear majority of the owners for the proposed R-1 Fish Hatchery Zoning District. We all agree with the good reasons given in the 2007 growth policy for orderly growth in the county for their area. We agree with the citizens of Lakeside that have expressed their desires for single family residential developments along the shoreline of Flathead Lake. They are in the process of updating their neighborhood plan and their recent surveys continue to indicate a desire to support single family residential development along Flathead Lake. He asked the board to support its own guidelines for the area and carry out the will of the majority of the owners for a designation of R-1. This is not an application for any other designation for the area.

Sherry Leicht, also a co-applicant, sated this is an effort by the majority of the owners in the neighborhood to try and maintain the single family residential character of the neighborhood as well as other goals. We understand there will be future growth in the area but want

it to occur in a planned and orderly fashion. They are also attempting to avoid commercial development in the area. There are many businesses that would be inappropriate for the neighborhood. R-1 zoning restricts many inappropriate commercial uses. She had concerns about the traffic problems in the area. The extra burden on the various agencies such as schools, fire department, water and sewer district, quick response unit, and the sheriffs department, the R-1 zoning would help keep the density down in the area and help the various departments. They are trying to help protect Flathead Lake water quality, fisheries and bird habitat against the high density development and its possible negative impacts. Montana Fish, Wildlife and Parks and Flathead Lakers have endorsed their efforts. We are seeking to comply with the guidelines of the growth policy by petitioning the planning board and the commissioners for an R-1 designation. We are attempting to be respectful of the past and present efforts of the Lakeside Neighborhood Plan. Both documents see planned growth along the lakefront as well as the desire to see the area kept single family residential. We are not anti-development, anti-condo, anti-apartment or anti-business group. To the contrary most of our backgrounds are business related. We want these activities to be done in appropriately designated areas and not forced into these single family unzoned neighborhoods. This effort for R-1 zoning, if successful, would prevent this from occurring.

Arthur Buckley, 225 Marco Bay Road, owns approximately 3.2 acres within the proposed district and supported the R-1 zoning proposal. It conforms to the growth policy. In addition, he felt it was important to retain the character of the area and preserve its beauty. The higher density is going to cause safety issues such as additional traffic. It's difficult, especially during the summer months, to get on Highway 93 due to the traffic and speed. In addition it would place a heavier burden if it's a higher density, on the schools, police, fire service and the water and sewer district. His brother-in-law and sister have a vacant lot at 835 S. Juniper Bay Road which is also in the proposed R-1 district and they are in total support of it.

Clare LaMeres, 297 Sunnyslope, spoke of splitting lots and requesting variances and how it isn't done easily. As a property owner she was requesting the board table this proposal and allow the neighborhood to meet or have new letters sent to them regarding the zoning so they can make a more informed vote. She is not against zoning. She didn't think there was anyone in the room or in the district that wants multi-family apartments, condos or anything. It's not something they need to discuss or worry about because nobody wants that. From reading the letters and speaking with fellow owners on the district, it is clear most of the votes cast as a way to prohibit multi-family dwellings with no clear understanding of the difference between R-1 and R-2. People weren't even given an opportunity to vote on R-2 zoning. Almost every single letter you received in favor of the R-2 zoning makes it clear the writers concern is condos, apartments or any kind of multi-family

housing. The letter from Norman and Mary Goodnough best explains what happened in the signature gathering. At the time of signing we were told only that it was to prevent the development of condominiums in our area. Once they studied the R-1 zoning they realized it would prevent them from building a home with an appropriate width size because of the small dimension of their lot. They are not the only ones who are starting to realize what they have done by signing the petition. Please do not make a decision based on inaccurate information. For example there are 75 signatures on the petition but please realize that does not represent 75 households. You do not have 75 separate petitions. She went to map and pointed out a huge area that represented only two homeowners. She thought visually it looks more powerful than it really is. In addition, of the 95 letters the board received in favor of R-1 zoning, only 36 households are represented not 95. Since more than one letter was sent from many of the households. Therefore, the report given to you stating 69% of the parcels are in favor of the zoning appears to be inaccurate. She didn't think it was intentionally misleading but the facts are it is misleading. The number of parcels should not be a factor used, the number of owners should be the factor used. Nevertheless, even using the number of parcels the map appears to be off. She felt her and her neighbors should be the ones to decide what happens to their investments. Most unsettling is the fact 21 of the 95 letters was sent by people who don't live or own property within the proposed zoning district. We in the district have a right to decide without outside interference the fate of the property. The statistics show misleading information and needs to be addressed. She didn't believe the people circulating the petition deliberately set out to trick people into signing something. They were seriously concerned about preventing condos in the neighborhood. The problem is, it turns out 59% of the lots in the proposed district are non-conforming while only 41% conform. It didn't make sense to zone something R-1 when only 41% of them conform. As the regulations read it is usually desirable to implement a zoning designation that will limit the number of non-conforming lots and uses. Also, two of the people who are asking the rest of the neighborhood to adhere to R-1 are non-conforming. You could of course just unilaterally choose R-2 in light of the reality of the neighborhood. She was requesting they not do that but they give the community a chance to get together, it shouldn't become a fight or an argument because we are all neighbors. Give them a chance to go back and give people a choice of either R-1 or R-2 or no zoning. At least it would be a more accurate response because there are a lot of people that are shocked at what they now cannot do with their property. Another possibility would be to wait for the new neighborhood plan if that would have an affect on what they would decide. It's better than doing something and having to change it later. She suggested it would be wonderful if they could get together as a neighborhood and go over all the realities of their neighborhood. We should care about how it affects people's properties. She reiterated she does not want condos or apartments in this district they are on the same page there.

Debbie Spaulding, 405 Tacklen Creek Road, supports the Fish Hatchery Zoning District and does not live within the boundaries of the proposed district. She had statistics for the board which would support the application. She is a member of the Lakeside Neighborhood Plan Committee. They did a community survey and several questions in the survey were pertinent to this application regarding Lakeside development. The full results of the survey are available for the public on the website [www.lakesideplan2008.com](http://www.lakesideplan2008.com). She gave her support as an individual and not as a committee member but she knows others from the committee have shown their support. The Lakeside community survey was sent to a total of 2053 addresses covering property owners and residents in the Lakeside community whose boundaries are designated in the 1994 neighborhood plan and the updated 2008 Lakeside Neighborhood Plan currently in process. The Fish Hatchery application for zoning impacts land within the Lakeside community boundaries. Therefore, these survey results are pertinent and should be considered seriously in making the board's decision. The 2008 survey return rate was an impressive 31.7%. Some of the top most important features of the Lakeside community per survey respondents are: lake access and quality, traffic and road patterns, use and safety, small town atmosphere, family oriented community, views, open spaces and parks and your neighborhood. All of these features represent the views of this zoning application. When asked if the respondent's perception of the growth rate was out of control, growing rapidly, acceptable or declining, over 60% perceived growth as out of control or growing rapidly. When asked if neighborhood planning was needed, 91% agreed or strongly agreed. When asked if zoning should be considered as an implementation strategy of the neighborhood plan, 79% agreed or strongly agreed. When asked if density standards should be implemented, 84% agreed or strongly agreed. When asked if lakefront development restrictions should be implemented, 82% agreed or strongly agreed. She believed the survey results from the Lakeside community are compelling and strongly support the Fish Hatchery Zoning District application. She urged the board to approve it.

Joe Orr, 5655 Highway 93 south, does not live in the district but does share several things in common with this district. One is Flathead Lake and another is the blessed road. And another is, given the rural character of this neighborhood, it's really part of a big neighborhood. They have applied for R-1 zoning and all 12 criteria they are required to consider zoning have been met, including overwhelming support for the application. This application for zoning is not perfect. There is going to be non-conforming areas as it's impossible to come into an area after-the-fact and zone an area and not have non-conformance. It appeared to him there are a lot of non-conforming tracts but  $\frac{3}{4}$  of the total land mass is conforming, greater than one acre. They followed all the regulations and they have the support of the planning office. He heard planning board members, from past boards, and at least one of the county commissioners; people should do some proactive thinking,



and get their area zoned to conform to the character of the neighborhood, before you have a problem on your hands. He thought, to a fairly good degree, that's what these applicants have done. He hasn't heard this should not be a zoning boundary. They have applied for R-1 zoning and as a member of the larger neighborhood he begged the board to figure something out tonight.

Bob Fraser, 375 North Juniper Bay, does not live in the district. He was born and raised in Kalispell and after an absence of about 45 years he came back and was well aware of the growth in his neighborhood and in the valley. Some of it was good and some of it was not so good. He is pro-growth but thought we should have growth with rules. Zoning is probably one of the greatest foundations for rules we can come up with in the neighborhood, our valley and our county. He asked the board to find in favor of these people that have made the proposal this evening and send a recommendation on to the commissioners with their approval.

Virginia Gazewood, 105 Looking East Drive, lives adjacent to the fish hatchery, separated only by Highway 93 South. She has been before the board on other zoning issues. She had concerns about traffic issues. She is in favor of zoning and knows there are ways to work out some of the concerns expressed this evening about smaller lots. She thought this needs to be done as soon as possible. One of the issues on the zoning is the many traffic accidents. She went to the map and pointed out where her concerns regarding the traffic were. The 55 mph speed limits really helps nevertheless, there are speeders along the area and with no left hand turn lane going north it causes accidents. She pointed out areas of traffic concerns and said this is a wonderful neighborhood and they want to preserve what she looks out her window and sees every day. She was in favor and asked the board to approve the proposal.

Kay Hanson, 841 South Juniper Bay Road, is a resident of the Fish Hatchery Zoning District. During the six years she has lived there she has been able to see what happen to the north of their neighborhood in the Old Highway 93 Zoning District. A lot of those changes and high density developments that got the neighbors to realize they needed to do something before something happened to them. She asked the board to make a decision tonight. She asked them to vote in favor of the R-1 zoning. Her property would be considered non-conforming but for her it would preserve the character and beauty of the area. The community pulls together and has the roads oiled every summer so there is not so much dust. She thought if they had R-1 zoning it would limit high density development and she asked for the board's support.

Bye Bitney, 841 South Juniper Bay Road, has witnessed many inevitable changes. However, the current trend consolidating single family home properties into large high density residential development

certainly threatens the charm and character of Flathead Lake. He supported the R-1 zoning.

Jason Bechard, 6125 Highway 93 South, asked the board to reconsider voting for R-1 zoning designation. He is in favor of zoning and believes this is forward thinking. However, R-1 zoning will put limitations on our properties. Take into consideration the lake properties are fairly unique in their character, shape and design. They own property with their parents and hope to someday split it between the two of them but they fall short of the R-1 designation in square footage. He appreciated the support of the local sewer and water works. However, the utilities and community services are here to serve us and they need to grow. If they are unable to do so that is a different matter. In terms of safety and the highway, he believed safety was a concern. He did not believe the burden of rectifying the problem resides with this small group of people. This is one of two major arteries to Kalispell and north from Missoula he thought the impact from a few more lots would have little impact on safety. He does support improving safety along this highway. He heard several concerns about the number of lots that are non-conforming and the acreage in areas that are non-conforming and we do live in the USA he believed each person has one vote for one property. It is generally not to give in to those with more money or more property. Not going for R-1 but rather R-2 zoning we would meet nearly all of the intent of this endeavor in terms of planned growth, production of high density commercial type properties such as condos and apartments. He asked the board to at least consider that in the vote and many people would be very happy with an R-1 2 designation.

Celia Eastburn, 131 Pineview, which is the very south end of this proposed district. They bought their property in anticipation of her retirement and because of what they saw. They did not write a letter but had signed the form requesting the petition. They also completed the survey from the Lakeside Neighborhood Plan Committee and supported the conclusions. They are supporting this proposal.

Allison McCarthy, lives in the Old Highway 93 District, requested support for this proposal for R-1 zoning. She agreed with comments before that even though they have some separate zoning proposals they all are part of a greater neighborhood and they all view each others land from different parcels. She asked the board to please give this some serious consideration and approve R-1 zoning.

Dan Bangeman, 543 North Juniper Bay Road, supported the zoning request due to the fact he did not want these people to have what was done right next door to him before they were zoned. Don't hesitate on this because we had condominium proposals submitted and accepted by the planning office three days before the county commissioners approved their zoning request. Don't put this off any longer than possible. The fish hatchery was brought up earlier and he didn't know

if anybody was aware but the state is in the planning process of constructing a new fish hatchery in the Creston area and will be abandoning the Somers fish hatchery. Lawyers are looking at it because the land was given to the state for a fish hatchery for the purpose of a state fish hatchery. They are trying to decipher the wording in there because it's possible if the state does not use that for a fish hatchery the land will have to revert back to family members of the original owner which at that time could be up for subdivision. He hoped the board would support this request and f=give an affirmative recommendation to the commissioners.

Lelsie Mercord, her family has owned property on Sunnyslope since 1943. The whole area is a wonderful area and they would love to keep at least most of the charm there right now and the single family home status. She supported R-1 zoning and would like for growth with rules. She personally would not like to have to go through what some of the neighbors in the north Juniper Bay area have gone through with some higher density housing. They want to preserve the area. She was not against growth but doesn't want to live next to an area full of apartments in the future. She was concerned about safety on the roads and how it will affect other agencies in the area. She reiterated her support for the R-1 zoning.

Peggy Hedin, 206 Westridge Drive, lives in the Spring Creek Zoning District. She wanted to point out those non-conforming lots have been there since 1900. They were there when the county originally set up the designated land use map in 1987. Those parcels were there but the county still said R-1 because it was thinking of the greater good and what should happen. They were still there in 2007 when the county again adopted the same philosophy for the area. It was done for very good reasons because the area represents a delicate resource for the entire county. All lakeshore properties on any lake, anywhere, are critical to the health of the lake they are on. Because of human habitat and run-off that occur from their driveways and their landscaping runoff are so close and go right into the lake. For that reason and the fact those areas have very non-standard roads and is not an easy area to get into. It's just not an area easily accessible for anything. If R-2 were to be the choice, she heard there could be some potential of 167 additional possible splits. To say that wouldn't happen is a little naïve because if it's the lakeshore and there is a developer around it's likely to happen. That is a probable real reality and should not be minimized. The topography, the access and the safety were reaffirmed what would be right for the area by the Lakeside plan survey. Everybody knows what the problems would be with high density. You are talking about the greater good of the lake, the county and the resource vs. some non-conforming lots that have been there forever. She thought astute governments all around the northwest are getting savvy about what they need to do to protect these resources and lakes before it's too late. As soon as this economic downturn is over we are going to have the big rush again. R-1 would be the

consistent and probably the responsible choice and the choice having the most foresight in it and she urged the board to accept the proposal and not delay.

Jim Clark, 128 Hill Dale Road, lives in the Spring Creek Zoning District and asked the board to forget about contemplating an R-2 designation. He realized this is a recommendation board and the county commissioners are going to have the final ruling. He would hate to see this zoning district be sent back to be reconsidered as an R-2 designation. We are close enough now and zoning takes a lot of time and energy. He was not particularly happy with the R-1 designation he received but if you send these people back now with the mess in Washington and on Wall Street clears up, they could see 15 developers in there before they could get back through this entire scheme again. He would hate to see these people lose everything in a fight between R-1 and R-2. Please accept the R-1 and pass it on to the commissioners with a recommendation to approve it.

Andrea Aiken, 1056 Rocky Meadows Trail, is the daughter of Steve Leicht and does not live in the proposed district. She is a teacher and hopes to continue to enjoy the lake and neighborhood as it is. They want to preserve the history and the lake quality. They are not against growth but want to do it with rules and dignity. The history is the main thing they want to preserve. Montana is a beautiful, natural place and they want to preserve that. They do not want it to turn into a Tahoe it needs to be preserved now. With a proactive approach, what they are doing is very special and she was in support.

Cheryl Bechard, 6125 Highway 93 South, Regarding the question of R-1 vs. R-2, she has a piece of property that is an acre and a half and it would keep them from being able to divide this property. Even more, the question was never brought to her and nothing was said about R-2 zoning. She was not knowledgeable about zoning and had to look it up and see what was to the north and south. She read the definition for R-1 zoning and R-2 zoning. When you look at the difference between R-1 and R-2 there are a lot of similarities. Other than there is a difference in lot size. She heard a lot of people talk about preserving the single family character. R-2 is for single family character. She also heard people mention they do not want commercial development in the area. R-2 does not allow for commercial development in the area. In the 12 points in the staff report, two policies were left out. (28.1 and 34.3) She read the policies for the board. The question is, when we have utilities and sewer available, is that the area you should say no you can't have half an acre lot or higher density areas. She was not saying condos. She thought it was more the areas outside where you couldn't get sewer where you really want to limit how dense things go. She asked the board to include the two policies that were left out. Again, 59% of the lots are less than an acre. To her, R-2 made a lot more sense. If we want to keep within the character of the community, to the north and south it is zoned R-2 all along the lake area. It felt to

her it has a direct impact on her property and she won't be able to make full use of it. She read the recommendation from the staff report and asked the board if they approve the proposal would they consider the recommendation staff made for her section which would be R-2.

Clare LaMeres, 297 Sunnyslope, read a letter from Bob and Sandy Cherot.

Kathy Briton, owns a lot on Pineview, said nobody spoke for the lake. The lake is still pristine and she didn't think it needed higher density than R-1. The higher density, the more roofs and blacktop with runoff into the lake. The more pesticides, herbicides and fertilizer run off into the lake. She supported R-1. If zoning is to the neighbors' detriment because they would have to conform to setbacks, she felt it was the right thing to do.

Susan Handy, 150 Little Deer Creek Road, wanted to remind the board of the fact in an area, she pointed it out on the map, a small portion of land is becoming commercial. The Lakeside Family Health Clinic, a very valuable and respected business has created a lot of new traffic. They have applied for a re-subdivision; they would like to increase commercial business. They applied to the Lakeside Community Council and were turned down because of lack of plan. The Lakeside Denture Clinic has expanded and there are rental units. The intersection at Deer Creek Road and Highway 93 is extremely dangerous. There is a passing lane there and it is totally inadequate for the traffic situation. Some of these things you aren't considering is things do creep in without our knowledge and before we know it we have a lot of things going on.

Kathryn Mercord, 230 Sunnyslope Road, agreed with all the people the traffic is absolutely horrendous already. She was in favor of R-1 zoning and felt it was very important for our lake, our community and for the road, for the safety and the sewer. More people need to be on the sewer and there has to be a way to get the easements to get them there for our lake.

Richard Williams, 101 Pineview Drive, was for R-1 also.

Mike Seamen, wanted to know how many splits or changes have been done in the last year in this area. Just as important how many in the last 5, 10 and 20 years. With or without this zoning change what is the possibility of changing in the future? He comes to a lot of zoning issues such as this because he is in the manufactured housing business. This is the first time he had ever seen a zoning recommendation or district try to be created when there hasn't been any changes in that area. Normally when an application comes before the board the applicants are trying to increase the density. This is one of the first times he has seen someone trying to minimize the density. This is especially true when you are dealing with an area with

community sewer. Normally we are dealing with areas where there are less people and they want to develop land, split it up, develop the lots, increase the value and make the area denser. R-1 is generally accepted for that reason because it takes one acre to create a lot if you don't have community sewer. In this area, because there is sewer system, he thought it was quite odd we are trying to increase the lot size compared to what is currently there. He was not trying to push one way or the other which way the board goes but all these things are really important to consider. We all know it doesn't matter what we recommend or think here, we just need two out of the three county commissioners to decide this. The funny thing with all of these planning issues is all this information needs to get to those three guys and hopefully we picked the right three guys to make the right decision. Most of the time when people are trying to get subdivisions through and zoning districts through, they bring up a bunch of issues such as traffic. No one wants to argue against that because health safety and welfare are the three best reasons to deny anything. We do have a highway going through there and he thought anybody that was going to develop or change this area would have to go before the board. The board would make sure the safety and those types of logistics are covered. The people that brought up good ideas regarding the difference between R-1 and R-2, based on the size of their lot really puts a damper on their style and is something to consider. He pointed out that in this zoning district he saw quite a difference between the districts to the north being high density and in fact some of the lots are .15 acres. That's similar to an R-5 designation like Village Greens and some communities in this area. They are on community sewer. Some of the areas to the south are less density having larger parcels and that might be something to consider. He didn't know if that was something the board had ever considered for a zoning district, having the parcels that border the high density smaller lots or whether it's discriminatory. There is a lot to look at here and whatever we decide is going to play for all of us for a long time to come. It's tough to change it once it's in stone. What happens here is going to fall right down the line. The two biggest factors are community sewer and the density you can portray with that type of sewer system. The other big thing is trying to keep people close to sewer systems and schools. There is a design to have high density in areas where it is more efficient and effective. This is actually the place where it's got the sewer and the roads and whoever is going to do a split is going to be required by the board to do it the way the board requires. All this needs to be thrown at the county commissioners so when they make this decision it's not only going to affect this area it's going to affect the next five or six zoning districts. Hopefully they will make the right decision for all of us.

Christy Erickson, 343 Marco Bay Road, lives right across from the commercial development. She didn't understand the R-2 designation people have been speaking about. She thought she was here for R-1 which she was in support of. She wanted the board to think about how many people have already gone to a lot of work to get this to a

point where you can actually control a big major part of the lake. The sewers that are there, she thought, were established to protect the lake more than anything. There was a lot of expense they went through privately, to bring sewer to their home. A lot of people have not hooked up to it yet. They want to limit the amount of density. When she first moved out there she could see the bottom of the lake very well. You didn't have slime, algae or grass growing from the bottom of the lake. All those things are there now. She was worried about the traffic. The types of people who are looking to develop will do so if you say R-1 is not going to go tonight. It's hard to get this many people to do all the things they had to do to get to this point. If the board does that, they would end up with a situation where they've had a beautiful opportunity to protect the lake and the people that have to drive back and forth between Missoula and Kalispell. You'll miss an opportunity to make it right. You'll also miss an opportunity for all of the animals; through the noise and the light and the dust and lack of trees. It's getting pretty hard for the animals. She urged the board to think about what they were doing tonight as it was very important.

Mary Kaplan, 250 Sunnyslope, has a non-conforming lot. She had a boundary line easement created a few years ago so she could have enough funds to sustain the original lake frontage. She sold it to a neighbor who she knew would keep the area as she intended it to be. Her parents bought this land back in 1969. She spoke for herself but believed the vast majority of folks there want to be proactive and protect this area. They have a tool to do that and it is planning. She begged the board to please keep this at R-1 so they can preserve this area that is totally unique to this country.

## **APPLICANT REBUTTAL**

Lacey wanted to clear up a misconception that had come up. There is sewer in the area but not every member in the area has access. He wanted that to be clear. The second misconception he wanted to clear up was the idea there was some sort of stuffing of the ballot box by additional family members writing letters. Clearly lots of family members have written in support of this district. Not all of them live here year-round. What that represents to the board is their commitment to this project. They care about the area a great deal. That's what that represents. It bothered him to hear the suggestion there was somehow deleterious about many families outside the district writing multiple letters. The other thing to look to is there had been a lot of discussion about statistics. If there is one statistic we can rely on is we have over 70% of the owners in this area who signed the petition. You've heard the comments and there is an overwhelming majority, certainly everyone has an opinion, and the board is not strangers to what people will present in their right to make comments. There is support for this petition in the majority way and the planning office has said it is their recommendation R-1 be approved. The growth policy has said multiple times this area should be R-1. He didn't believe the board needed to get bogged down in statistics. In looking at the difference between R-1 and R-2 there is a distinction

and staff ran through the numbers specifically about what a build out on R-2 would do vs. a build out on R-1. The difference is over a hundred potential lots. When you get those kinds of numbers it makes a difference on school volume and traffic. We don't need to make a difference between 60 is okay and 68 is not or 100 is extreme. Those things matter. This is why we have things like a planning office and a body like you to be proactive. The decision is a policy one we trust the board to make. But he didn't believe they needed to get bogged down in numbers. There is a difference between R-2 and R-1 and every entity that has spent considerable time on this has pointed to R-1. He urged the board on behalf of the applicants and owners in the area to vote for R-1 and send it to the commissioners.

**STAFF  
REBUTTAL**

Harris said typically when we look at creating implementation for land use plans we look forward and not so much backward. In this case we are trying to look to the future.

Hagemeier said there had been a lot of numbers put out there by staff and members of the public. He wanted to reiterate all his numbers were estimates and not set in stone. If the board is going to use numbers in the findings-of-fact, he would encourage they take that into account.

Harris said when we look at implementation of a plan, the implementation from a regulatory sense is zoning. That is the standard way to do it. But you just don't go out and zone you need to have a basis for zoning and the plan is the basis. In this case the plan is the 2007 growth policy which calls for one dwelling unit per acre. There was a lot of discussion regarding non-conformance. If you look in the zoning regulations, the R-1 zoning district anticipates non-conformance. In fact it's very specific, in that zoning designation, in anticipating various lot sizes. If the widths of the lots are less than 150 there is a reduction in setback. If the widths of the lots are less than 100 or less than 50 it specifies the setback requirement. If you take that thought out to its logical extension and apply it to subdivision; if you have a 50 foot width lot you would need roughly 1000 feet to get an area approximately one acre. At that point you would run into our subdivision regulation requirements for width to depth ratios. You wouldn't be able to subdivide. The application of a non-conforming subdivision isn't there. That logic if you draw that back in, basically says you are going to get lot sizes all over the map in R-1. And under our zoning regulations, that is accounted for in terms of varying setbacks and lot widths. The R-1 zoning districts specifically address what if you have a lot at 50 feet width, what if you have one at 100 feet, and what if you have one at 150 feet. It's addressed with various reducing setbacks proportionately. In fact at 50 feet they are reduced less than other zoning districts. Other zoning districts don't have anything more intense than an R-1. It doesn't allow that flexibility. There is no flexibility in an R-2 zone. The R-1 setbacks for the narrowest lots are less than R-2 by five feet.



Cross clarified the side yard setback for a narrow lot in R-1 is less than the side yard setback in an R-2.

Harris said it is actually half. Rather than ten feet its five feet. It's a reduction by half.

Mower asked staff for a summary of what the Lakeside Community Council recommended.

Hagemeier said they approved the R-1. They did that because they felt there was a broad support for the R-1. They were concerned about the number of non-conforming lots and asked staff to look into it a little bit. That's when he did the build out calculation that wasn't a part of the staff report. When he looked at R-2 he realized the build out would be significantly higher than R-1. The council was positive.

**MOTION TO  
ADOPT F.O.F**

Hickey- AuClaire made a motion seconded by Pitman to adopt Staff Report FZD 08-01 as findings-of-fact.

**SUBSIDIARY  
MOTION  
(Add F.O.F #\_\_)**

Heim made a motion seconded by Pitman to add a finding-of-fact stating there is no Lakeside County Water & Sewer District public water supply in the area.

**ROLL CALL  
(Add F.O.F #\_\_)**

On a roll call vote the motion passed unanimously.

**BOARD  
DISCUSSION**

Heim said the forced main goes right up the highway. Many of those large lots that front the highway sewer is accessible. Where it's not accessible is on north end where all the small lots are. The sewer line only goes part way down that road. Down on Sunnyslope there's possibly a few lots that would not have access. Pineview at the very south end, its available but not waiting to be hooked up to.

**SUBSIDIARY  
MOTION  
(Amend F.O.F #9)**

Cross made a motion seconded by Pitman to amend finding-of-fact #9 to add: *with the R-1 the potential build-out was estimated to be 48 additional parcels than what currently exists and with the R-2 potential build out would be estimated around 167 potential more parcels.*

**ROLL CALL  
(Amend F.O.F #9)**

On a roll call vote the motion passed unanimously.

**BOARD  
DISCUSSION**

Dziza was bothered by the calculation of conforming and non-conforming lots. Staff didn't use lot width. He knows how rare, 150 foot of lakefront is huge. If a lot less than 150 feet in width is non-conforming, he keeps thinking there are a lot more lots that are non-conforming than what staff had come up with.

Hagemeier said he would have liked to have done it but it would have been pretty labor intensive to do it, to get a ruler out and measure each lot. The GIS arcview doesn't have the ability to do length. He

could have measured it on there but it would have been really labor intensive and he has to cut corners on some things sometimes. Just looking at it he had a feeling the lots that would be less than 150 feet; the majority of them are already non-conforming anyways. He pointed out some of the parcels on the map.

Cross asked staff if some of the non-conforming lots are very close to an acre.

Hagemeier said when he calculated this he had it at 1.0. He had one lot that was at .9995 something and there were a number of them, probably five that were at .9. There were a handful that were pretty close to one acre.

**ROLL CALL TO  
ADOPT F.O.F**

On a roll call vote the motion passed unanimously.

**MOTION TO  
APPROVE**

Heim made a motion seconded by Hickey-AuClaire to adopt Staff Report FZD 08-01 and recommended approval to the Board of County Commissioners.

**BOARD  
DISCUSSION**

Mower said he'd really like to commend the people that got together to do this. He wished more people would do it as it would make the boards' job easier to get the whole county zoned. He was in favor of the proposal because it complies with our growth policy, the neighborhood wants it and it complies with their neighborhood plan. More important for him is, regardless of what people said about the pristine nature of the lake, the fact is for the last 20 years it's been degrading every year. The lake needs to be protected and even this doesn't protect it; it slows everything down. He thought they needed to protect the lake and he was strongly in favor of this proposal.

Dziza comment he appreciated what everyone is trying to do but he personally thought R-2 was more appropriate zoning. One acre lots on the lake seemed like a pretty exclusive club they were creating especially with sewer running through there. He couldn't support this because of the number of non-conforming lots.

Cross said he drove down there before he read the staff report. When he drove by there was all this empty land up by Highway 93. He assumed the people that live down on the lake were ganging up on the people that own the land up by the highway to keep them from putting condos and more houses up there. When he read the report it looked like most of the people that owned the land up by the highway were part of the people that agreed to it. Normally what you see is people forcing other landowners what to do but what he sees here is there are some people not in favor of it but they appear to be in a minority. He supports the proposal. He was concerned about the public testimony tonight, the part that was most troubling to him was when they were

questioning the numbers and parcels and how many people did vote and staff needs to be very clear about how we got to the 72% number.

Hagemeier said he took the petitions and matched them up with who owns the property. That's it, pretty simple. The map is what he came up with. For the opposed, he took letters saying they live at a certain address and were opposed and plugged them in. The tan color was ones they didn't get anything. He can't mess with that statistic. There is no fudging it.

Pitman commented having just gone through zoning 101 at the Montana Association of Planners (MAP) conference, it seemed they hit every milestone in coming up with zoning here. There has been a master plan, a neighborhood plan and the majority of the people want it. He was concerned about the non-conforming uses but he is now convinced they can live with that. He was in favor of the proposal.

Hall said she too looked at numbers and studied it out carefully. Looking at the recommendation, regarding the number of non-conforming lots, he was suggesting north of Juniper Bay Road become R-2 and below there is R-1. She liked the concept. She wanted to move it on to the county commissioners and make that suggestion. But that was not what their application was for and that was what her big concern was. Listening to all of the information presented, she could see where R-1 would work very well.

Hickey-AuClaire commented she appreciated the community coming together in trying to get something done and being proactive and plan something before they react to crises. She agreed with Mower.

## **ROLL CALL TO APPROVE**

On a roll call vote the motion passed 6-1 with Dziza dissenting.

## **COMMITTEE REPORTS**

Cross reported committee B did not meet but he went in Mowers place to the Whitefish Transition Team meeting. That affects committee B's work. If you look at the 'donut' there are a whole bunch of zoning designations. Jonathon Smith, County Attorney, is under the opinion we have to have a legal description for each one of those. Staff went to the Whitefish planning office to see if they had any legal descriptions for those areas and found they only had a map. According to Harris that is pretty much standard operating procedure throughout the country. If they are going to insist on having legal descriptions for every one it will push everything back a couple of months. It isn't sitting well with the commissioners so they were going to go to outside council to see what they can do to get this map idea approved. The transition team is trying to maybe do a memorandum of understanding which would leave it in the county control but put the city planning board in charge of doing the hearings. Then layering on some things from the city such as dark skies, signage, architecture review and big box. There is an attorney, Diane Smith, who is supposed to put

together a framework of an agreement. The sign ordinance from Whitefish is 30 pages and David Taylor, the head of planning in Whitefish, sent out an email that had whatever the applicable Whitefish ordinance was on eight items.

Hall said it looked to her like the county is taking the donut back but the county is allowing Whitefish to have all of the control like they had the jurisdiction before the inter-local agreement.

Committee A will meet next Wednesday, October 1<sup>st</sup> at 6:00 pm.

**OLD BUSINESS**

Harris handed out a list of lawsuits currently pending against the county and gave a brief description of each.

**NEW BUSINESS**

Harris said the county commissioners will hold two public hearings for the Subdivision Regulations, on October 23<sup>rd</sup> and October 30<sup>th</sup>, at FVCC starting at 6:00 pm. The week before he will brief the commissioners on all of the changes. He would appreciate it if a few of the planning board members could attend.

**ADJOURNMENT**

The meeting was adjourned at approximately 9:15 p.m. on a motion by Heim. The next meeting will be held at 6:00 p.m. on October 8, 2008.

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Gordon Cross, President

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Mary Sevier, Recording Secretary

*APPROVED AS SUBMITTED/CORRECTED: 11/19/08*